

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**ABRA HORN**

**PLAINTIFF**

**VERSUS**

**CIVIL ACTION NO. 1:08-cv-41KS-MTP**

**HARRISON COUNTY, et al; SHERIFF GEORGE  
H. PAYNE, JR.; WARDEN DONALD A. CABANA;  
CHAPLAIN JOE COLLINS; RHONDALYN ROGERS;  
KARL STOLZE and RICK GASTON, Former Deputies**

**DEFENDANTS**

**MEMORANDUM OPINION AND ORDER**

This matter is before the court on a Motion to Dismiss [#11] filed on behalf of the defendant Rick Gaston. The court, having reviewed the motion, the pleadings and exhibits on file, finding that the plaintiff has failed to respond, and being otherwise fully advised in the premises, finds that the motion should be granted.

The defendant Rick Gaston has moved the court to dismiss this action based on the failure of the plaintiff to timely secure service of process on him within one hundred twenty (120) days of the filing of the Complaint, which was filed on February 8, 2008. The plaintiff has apparently not attempted service of process on this defendant. The defendant now contends that the plaintiff has not complied with the requirements of Rule 4 of the Federal Rules of Civil Procedure regarding service of process in a timely manner and has not sought an extension of time to do so.

The court notes that the plaintiff is represented by counsel and his counsel is charged with the responsibility of complying with the rules of this court and the Federal Rules of Civil Procedure. Clearly, in this instance, he has not complied with the requirements of Rule 4(m) regarding service of process within the time limit set by the rule. That subsection provides:

**Time Limit for Service.** If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Rule 4(m), Fed. R. Civ. P.

The court finds that the plaintiff has not complied with the requirements of Rule 4 regarding timely service of process and has not attempted to offer any reason for his failure nor has he responded to this motion. The motion to dismiss should therefore be granted.

IT IS FURTHER ORDERED AND ADJUDGED that the Motion to Dismiss **[#11]** is Granted and the plaintiff's complaint against defendant Rick Gaston is hereby dismissed without prejudice. A separate judgment will be entered herein in accordance with Rule 58, Fed. R. Civ. P.

SO ORDERED AND ADJUDGED this the 28th day of July, 2008.

*s/Keth Starrett*  
UNITED STATES DISTRICT JUDGE